

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

INVESTIGATION INTO UTILITY POLES DOCKET NO. DM 05-172  
CITY OF ROCHESTER'S RESPONSE  
COMMISSION STAFF'S TOPIC 3 DATA REQUEST DATED 04/20/06

NOW COMES, The City of Rochester ("City"), a municipal corporation duly chartered by the State of New Hampshire with a place of business at 31 Wakefield Street, Rochester, New Hampshire, and provides the following responses to the New Hampshire Public Utilities Commission's Data Request of April 20, 2006:

**Request No. Staff- Licensing 4-4**  
**Made to Electrics, Verizon, municipalities & NHDOT:**

If a municipality or the State of New Hampshire Department of Transportation seeks to attach to utility poles and/or occupy conduit space in order to build an intra-governmental network for government use only, are they required to execute a Pole Attachment or Conduit Occupancy Agreement with the owner or joint owners of the poles and conduit, apply for a license, and pay all appropriate fees including engineering surveys, make ready costs and prevailing pole attachment and/or conduit occupancy fees? Please explain your answer fully and provide the basis for your rationale, including a citation to the rule, tariff, ordinance or statute that supports your assertion.

**City of Rochester's Response:**

Based upon so-called "pole license" records maintained by the City, it appears that during the late 1800s and early 1900s utilities, particularly New England Telephone & Telegraph Company, reserved space on poles erected in the City right-of-way for the City to use for its "telephone, fire alarm and police signal wires used for municipal purposes" without provision for the payment of any fees.

It is the further understanding of the City of Rochester that, in more recent years, the utilities have continued to take into consideration this reserved space when the cost of poles has been figured into the utilities' rate base for rate setting purposes.

Under cover letter dated January 18, 2005, the City, without prior consultation with either

Verizon or PSNH, received a voluminous document entitled “Pole Attachment Agreement” between Verizon, PSNH and the City of Rochester, which agreement established an extensive and detailed set of regulations and rules to be observed by the City, and charges to be paid by the City, with respect to pole attachments.

The cover letter which accompanied this proposed agreement requested that the City sign and return the same to Verizon by February 18, 2005. The City has refrained from signing the agreement on a number of grounds including, but not limited to, its contention that the reserved space for municipalities has already been paid for by ratepayers and is therefore reserved for use by municipalities as the representative of the people of the State of New Hampshire, the utilities are without legal basis for establishing such charges, and the unilateral nature of the utilities’ actions without first seeking to expand the authority for their use and occupation of the public highways pursuant to the pole licensing provisions contained in Chapter 231 of the New Hampshire Revised Statutes Annotated.

While for many years the City of Rochester utilized space on the utility poles for the maintenance of a fire alarm system, at the present time so such use is being made by the City in the reserved space.

Currently the City does obtain intra-municipal communication services through an arrangement with the local cable television provider.

As is the case with other municipalities throughout the State of New Hampshire, the City of Rochester is monitoring the efforts of the Local Government Center and electric utilities’ to develop a standard pole licensing agreement that protects municipalities reserved rights on utility poles and contains provisions for the placement of municipal wires, etc. on all poles and in all conduits placed in the municipalities’ highways.

**Persons Responsible for Response:**

**Danford J. Wensley, City Solicitor**  
**Thomas Willis, City Engineer**  
**Brian Lebrun, Finance Director**

**Request No. Staff- Licensing 4-6  
Made to Municipalities:**

Please provide procedures and actual practices for municipalities' or their subcontractors' placement replacement, maintenance and repair of municipal communication equipment in reserved space.

**City of Rochester's Response:**

See answer to request #4-4 above. Given the fact that the City does not currently locate equipment within the reserved space, this question is currently not applicable.

**Persons Responsible for Response:**

**Danford J. Wensley, City Solicitor  
Thomas Willis, City Engineer**

**Request No. Staff- Licensing 4-16**  
**Made to Municipalities:**

Are you aware of any unlicensed utility poles in your jurisdictions? If so, please provide an approximate number by town to the extent you are able.

**City of Rochester's Response:**

Utility companies do not voluntarily provide the City with an inventory of poles located within the City, or of so-called pole licenses issued within the geographic limits of the City of Rochester. Given this fact, it is difficult, if not impossible, to determine whether, and to what extent, unlicensed poles (and/or conduit, etc.) exist within the City. It is the belief of the City that there are a significant numbers of unlicensed poles. This conclusion is based, in part, upon the fact that, as part of discovery undertaken in ongoing litigation between Verizon and the City, the City was provided with a detailed list of telephone poles within the City in the year 2000. This list identified poles by height, number and street location and contained approximately 6,900 individual poles.

In 2005, in connection with the same litigation, Verizon asserted, in connected with its valuation of its land interest held pursuant to its pole licenses, that it maintained approximately 4,900 telephone poles within the City of Rochester. Given the street by street, pole number by pole number, list that was provided to the City in the year 2000, and the fact that no significant activity involving the elimination of telephone poles within the City has been observed during the intervening time frame, it would appear that there is a substantial likelihood that there may be literally thousands of unlicensed telephone poles within the City of Rochester.

The difficulty in tracking the number of licensed telephone poles within the municipality stems from several sources. The pole licensing system extends back over a 125 year period during which time record keeping by the City, and apparently other municipalities, has been of varying degrees of formality. Additionally, under the provisions of R.S.A. 231:161, I, municipalities, issue pole licenses only with respect to public highways that are maintained by the City. The Commissioner of Transportation of the State of New Hampshire is responsible for issuing pole licenses with respect to poles, conduit, etc. located in highways maintained by the State of New Hampshire. The New Hampshire Department of Transportation does maintain records regarding pole licenses issued with respect to State maintained highways, however, the extent, accuracy and content of those records is not readily available to local municipalities. Furthermore, the division of licensing authority creates a system whereby the erection of poles in transition areas between State and City highway maintenance responsibility limits may lead to circumstances in which pole licenses are not obtained, particularly in circumstances where poles are placed prior to the issuance of a pole license.

Another significant problem with the current pole licensing scheme from the standpoint of record keeping at the municipal level stems from the fact that R.S.A. 231:160-a permits poles, structures, conduit, etc., which are designated on subdivision, site review or other development plans to be "deemed legally permitted or licensed without further proceedings" under R.S.A. 231

“...provided that copies of the appropriate utilities’ easements, work plans, or other data showing the locations of such structures, are submitted to the municipality for recording purposes” when “... such location becomes a public highway”. It is the experience of the City of Rochester that compliance with such statutory requirement by utilities has been spotty, at best, thereby calling into question the licensing status of utility poles and related structures located within new subdivisions or developments.

**Persons Responsible for Response:**

**Danford J. Wensley, City Solicitor**  
**Thomas Willis, City Engineer**

**Request No. Staff- Licensing 4-17**  
**Made to Municipalities:**

Do you perceive unlicensed poles as a problem in your jurisdiction? If so, please explain why.

**City of Rochester's Response:**

Yes. The existence of unlicensed poles (or of licensed poles, the license for which is applied for after the location of a pole) poses a number of safety and construction problems for the City. Poles located too close to the existing pavement can interfere significantly with snow removal and other highway improvement and maintenance activities by the City. Furthermore, poles located in such areas inhibit widening of the paved right-of-way and the installation of sidewalks. In areas around intersections, the location of unlicensed poles can create sight line problems which result in dangerous conditions for motorists attempting to enter a road from a stop, or when approaching a turn from a main highway. In instances where poles may have been damaged by City vehicles in the course of snow removal operations, Verizon has attempted to have the City reimburse it for its claimed damage.

A primary problem arising out of the existence of unlicensed poles owned by a telephone company, such as Verizon, is the impact that the absence of a pole license can have upon the telephone company's obligation to pay its fair share of the common tax burden for the use and occupation that it has of the public highway pursuant to its pole licenses.

The New Hampshire Supreme Court has recognized that pole licenses, which have been amended to reflect the requirements of R.S.A. 72:23 I, relative to the obligation of users or occupiers of governmentally owned land to pay properly assessed real and personal property taxes, subject the land used or occupied by a utility pursuant to such pole license to real estate taxation. See N.E. Tel. & Tel. Co. v. City of Rochester, 144 N.H. 118 (1999); Verizon New England Inc. v. City of Rochester, 151 N.H. 263 (2004). Both the City of Rochester and Verizon have advanced assessment methodologies for the land used or occupied in the public highways by telephone companies that involve a determination of the length of the corridor(s) occupied by the telephone company's communications plant and equipment in the public highways. Verizon has utilized the number of telephone poles as a means for determining the length of a portion of this corridor. Since the New Hampshire Supreme Court has determined that the land used and occupied by telephone companies under the circumstances outlined herein is taxable under R.S.A. 72:6, the telephone companies and other utilities should be required to provide each municipality with information regarding the nature and extent of its infrastructure located within the public highways, whether licensed or unlicensed, on an annual basis.

**Persons Responsible for Response:**

**Danford J. Wensley, City Solicitor**  
**Thomas Willis, City Engineer**

**Request No. Staff- Licensing 4-20**  
**Made to Municipalities:**

Do you follow the New Hampshire Department of Transportation's *Utility Relocation Process–Scheduling Guidelines* (see Attachment NHDOT Utility Relocation Process (Scheduling Guidelines) to Verizon NH's response to Staff 1-37) on the administration of public works projects when undertaking a public works project in your municipality? If not, why not? Please provide a copy of the administrative guidelines that you follow.

**City of Rochester's Response:**

No. The City has been unaware of the New Hampshire Department of Transportation's *Utility Relocation Process-Scheduling Guidelines*. To the best of its knowledge, the City has not been advised that it should, or is required, to be using such guidelines. The procedure normally followed by the City with respect to construction projects involving utility relocation is for City staff to work directly with local utility company representatives. The City's current process is not documented and consists primarily of a course of conduct that has been developed over time.

**Persons Responsible for Response:**

**Danford J. Wensley, City Solicitor**  
**Thomas Willis, City Engineer**

**Request No. Staff- Licensing 4-21**  
**Made to Electrics, Verizon, Municipalities and NHDOT:**

What do you recommend to improve municipal road project coordination?

**City of Rochester's Response:**

The coordination of municipal road projects with utilities has become more difficult as utilities, particularly Verizon, appear to have reduced staff and consolidated their operations in a manner that results in an inability to timely respond to the needs of other users of the public highways in which the utilities are licensees. Without being exhaustive, the following are a few City recommendations that could be implemented to improve coordination of utilities and municipalities with regard to road projects:

- (1) Utilities should be appropriately staffed to perform pole maintenance and pole relocation functions consistent with the public good and their obligations under the law to keep the highway free for public use;.
- (2) Utilities should be required to provide municipalities with maps or diagrams indicating the location of all utility poles and other structures located within the public highways, which maps or diagrams should be updated and provided to municipalities on an annual basis;
- (3) Public Utility Commission enforcement for non-compliance with pole licensing and maintenance requirements should be established and vigorously enforced.
- (4) Realistic response times by utilities should be required and a mechanism should be developed for notifying the Public Utilities Commission of any initial estimated response time provided by a utility to a municipality or member of the public. If extensions of such response time are required, the utility should be obligated to file a request for an extension with the PUC, including all reason(s) for such extension;
- (5) Utilities should be required to maintain a website which should contain the names and means of contact for persons on their staff having responsibility for, and the ability to make, decisions with regard to pole location, relocation and related matters.

**Persons Responsible for Response:**

**Danford J. Wensley, City Solicitor**  
**Thomas Willis, City Engineer**



**Request No. Staff- Licensing 4-24**  
**Made to Electrics, Verizon, Municipalities and NHDOT:**

In the event that a public works project, either municipal or state, calls for utilities to temporarily relocate their facilities before moving them to their final location at a later date in the project, should the utilities be compensated for the temporary relocation work? If your answer is no, please explain why and provide the basis for your rationale, including a citation to any rule, tariff, ordinance or statute that supports your assertion.

**City of Rochester's Response:**

No. Utilities are virtually unique in the private sector in that a significant and essential portion of their business assets are located on public highways. The utilities pay no rent or other fee for the use of this space to any governmental entity. The assets so located allow these utilities to receive hundreds of millions, and in some cases billions, of dollars in revenue on an annual basis. Additionally, utilities receive revenue from other entities, such as cable television franchisees, utilizing the utility poles, conduit, etc. located in the public highways. The provisions of R.S.A. 231:168 provide that the location for poles and structures and of underground conduits and cables "...shall be made so far as reasonably possible so that the same and the attachments and appurtenances thereto will not interfere with the safe, free and convenient use for public travel of the highway or of any private way leading therefrom to adjoining premises or with the use of such premises or of any other similar property of another licensee." Given this fact, the undertaking of a public project by a municipality or the State of New Hampshire is clearly a public undertaking which the pole licensing statutes contemplate, and, given the fact that such statutes do not call for a payment by the governmental entity to the utility in such instances the licensing laws should be viewed as containing a *de facto* finding by the public entity that the "public good" requires the removal, relocation or other change of utility property location to accommodate the public good.

**Persons Responsible for Response:**

**Danford J. Wensley, City Solicitor**  
**Thomas Willis, City Engineer**